
TITLE 329 SOLID WASTE MANAGEMENT BOARD

Proposed Rule
LSA Document #09-194**DIGEST**

Adds [329 IAC 11.7](#) concerning registration, including construction and expansion of a facility, storage and operational requirements, and closure and financial assurance for facilities that process industrial process waste or commercial solid waste as an alternative fuel. Effective 30 days after filing with the Publisher.

HISTORY

First Notice of Comment Period: March 25, 2009, Indiana Register (DIN: [20090325-IR-329090194FNA](#)).

Second Notice of Comment Period: July 27, 2011, Indiana Register (DIN: [20110727-IR-329090194SNA](#)).

Notice of First Hearing: July 27, 2011, Indiana Register (DIN: [20110727-IR-329090194PHA](#)).

Change in Notice of Public Hearing: October 26, 2011, Indiana Register (DIN: [20111026-IR-329090194CHA](#)).

Change in Notice of Public Hearing: December 7, 2011, Indiana Register (DIN: [20111207-IR-329090194CHA](#)).

Date of First Hearing: February 21, 2012.

PUBLIC COMMENTS UNDER [IC 13-14-9-4.5](#)

[IC 13-14-9-4.5](#) states that a board may not adopt a rule under [IC 13-14-9](#) that is substantively different from the draft rule published under [IC 13-14-9-4](#), until the board has conducted a third comment period that is at least 21 days long.

Because this proposed rule is not substantively different from the draft rule published on July 27, 2011, Indiana Register, DIN: [20110727-IR-329090194SNA](#), the Indiana Department of Environmental Management (IDEM) is not requesting additional comment on this proposed rule.

SUMMARY/RESPONSE TO COMMENTS RECEIVED FROM THE SECOND COMMENT PERIOD

IDEM requested public comment from July 27, 2011, through August 26, 2011, on IDEM's draft rule language for amendments to solid waste processing facility rules at [329 IAC 11.7](#) concerning registration of facilities that use industrial process waste or commercial solid waste as an alternative fuel source. IDEM received comments from the following parties:

Joseph Miller, Facilities Manager, Covanta Energy (CE)

Scott Quaas, Environmental Manager, Lehigh Cement Company (LCC)

Following is a summary of the comments received and IDEM's responses thereto:

Comment: Our solid waste permit includes extensive provisions for accepting and handling the industrial and commercial solid waste streams that are under consideration in the proposed registration rule making. These permit provisions included detailed review and negotiation with IDEM to ensure that human health and the environment were properly protected. Our experience in developing these plans with IDEM, and as we have also developed similar plans and procedures used to receive and handle these materials is essential to a successful program. Mere registration of facilities that intend to process these materials is not adequate to ensure that both the elements of the program and its execution are adequate. (CE)

Response: The definition of alternative fuel includes solid wastes that when properly handled pose low environmental risks. The registration is intended for facilities that primarily burn fossil fuels and are supplementing their fuel need with segregated commercial and industrial waste streams that meet the minimum fuel value of five thousand (5,000) BTUs per pound and cannot exceed thirty percent (30%), by weight, of total fuel feed for the facility.

Comment: The registration allows facilities to accept up to 30% of heat input as alternative fuel. Allowing a facility to take up to 30% of their capacity of this waste essentially allows them to operate as a solid waste disposal facility, yet does not require them to meet the same regulatory standards required of a solid waste disposal facility. At an industrial or utility sized generating station, this rule would allow processing of huge tonnages or material and significantly impact materials handling and storage facilities. (For example a moderate sized facility that generates a million pounds of steam per hour would be allowed to accept up to 300,000 tons per year of alternative fuel.) Facilities using the identified wastes as an alternative fuel source should be more closely regulated to provide adequate environmental, health and safety requirements, and to prevent dual and unequal application of those regulations to facilities currently managing those wastes. (CE)

Response: IDEM recognizes that for some large industrial facilities 30% of alternative fuel by weight may represent a large amount of alternative fuel. However, the waste that is allowed to be burned or processed under the registration pose low environmental risk when stored, processed, and handled. No municipal solid waste will

be allowed to be burned or processed under this registration. A facility that burns solid waste as a fuel is also subject to the Air Pollution Control Board rules at Title 326.

Comment: The universe of industrial and solid waste includes many materials that are hazardous wastes, as well as many non-hazardous materials that can allow unhealthy exposure to workers. Covanta employs a dedicated staff of employees that are specially trained in RCRA and health and safety exposure issues to avoid these hazards. (CE)

Response: No hazardous waste will be allowed to be processed under this registration. Materials that could be accepted and burned at this facility under this registration, such as, manufactured wood waste, paper, plastic, tires, rubber, carpet, oil filter fluff, cosmetics, or corn seeds are considered low risk to human health and the environment.

Comment: Commercial and Industrial solid waste includes sources of waste various putrescible wastes such as restaurants and food preparation facilities, these require significant vector and odor controls. (CE)

Response: The facilities registered under this rule may be allowed to burn segregated commercial waste and industrial process waste but this rule does require the registered facility to control odors and vectors at [329 IAC 11.7-6-1\(a\)\(6\)](#).

Comment: The requirement to develop control plans should not replace necessary environmental analysis, emission regulations, management of stored material and operational management of storm water and ash testing. (CE)

Response: This rule does not supersede the requirements for facilities to comply with emission rules under Title 326 or storm water management and land application requirements under Title 327. This rule does specify requirements for environmental analysis and monitoring of incoming waste. Land disposal must comply with [329 IAC 11.7-7-1](#).

Comment: The rule allows storage of alternative fuels for up to six months and longer provided that there is a "demonstrated need". This appears to be an unnecessary provision for a combustion facility. Materials should be required to be managed on a much shorter period consistent with pit storage requirements, financial assurances and other provisions consistent with WTE facilities. (CE)

Response: With the seasonal variation of some fuels, the facility may need six (6) months or longer storage time. The Commissioner will consider longer storage time as requested by the facility and the facility must maintain records of alternative fuel inventory.

Comment: One rationale for the rule is to relieve the regulated community of permitting costs including state fees and permit preparation costs. State fees are minimal to any facility that assembles the plans and documentation required by the registration process. (CE)

Response: The rationale of this rule was to streamline the permitting process for alternative fuels that when properly handled will pose a low environmental risk and are used by facilities that are already permitted and comply with requirements under the air and water rules.

Comment: This rule appears to bypass any public notification and comment process required by other similar facilities, including traffic impacts, noise, health concerns, and odor. (CE)

Response: There are no public notice requirements under this registration; however, this rule does require the registered facility to adequately control dust, odors, wastewater, vectors, litter, and leachate under [329 IAC 11.7-6-1\(a\)\(6\)](#). Traffic impacts and noise are controlled under local zoning authority or by local ordinances.

Comment: Under the proposed rule the re-classifying of specific non-hazardous secondary material resources that we use or intend to use as "solid waste" will severely impact our company and the infrastructure of existing and potential suppliers, transporters and related businesses for these materials. (LCC)

Response: These wastes have always been considered solid waste under [329 IAC 10](#). To process these wastes would require a solid waste processing facility permit under [329 IAC 11](#).

Comment: We have pursued secondary materials for replacement fuels and raw materials. The cement market has been hit hard financially by the recent downturn in the U.S. economy and we view secondary materials as a means to keep up with the competitive edge. This becomes even more important as new NESHAP regulations will place additional economic pressures on the cement industry. The Mitchell Plant uses: clean or treated wood products, pressed paper making wastes, engineered fuels, paper and /or cardboard recycling residuals, including paper –derived fuel cubes, paper fines, and paper and cardboard rejects, obsolete seed, hulls and seeds, spent grain, agricultural and forest-derived biomass, biosolids, and tire-derived fuel. All of these materials have been or can be used as viable alternatives to traditional fuels in cement kilns. However, if these materials are considered "solid wastes" under the proposed rule, Lehigh would need to reconsider the use these materials for several important reasons. We would be subject to the CISWI rule (40 CRF 60 Subpart CCCC and DDDD) that would impose new air regulations. We can't comply with that. We would also be concerned with the use of materials recovered from recycling and material recovery facilities. It is also a stigma to use "solid waste" and not acceptable in our company. USEPA is reviewing non-hazardous secondary materials to determine which materials should be considered a solid waste and which are considered fuels. Lehigh submitted a Title V permit application and was approved by the Office of Air Quality to use 20% engineered fuel (not a waste) on a heat input basis. (LCC)

Response: How Indiana interprets or defines solid waste does not impact Federal definitions or how the EPA applies their air regulations. If a facility burns treated wood products, pressed paper making wastes, engineered fuels, paper and /or cardboard recycling residuals, including paper –derived fuel cubes, paper fines, and paper and cardboard rejects, obsolete seed, hulls and seeds, spent grain, biosolids, and tire-derived fuel, the facility would be required to obtain a full solid waste incinerator permit under [329 IAC 11](#). This rule streamlines the requirements to burn such alternative fuels and does not make the facility subject to obtaining a solid waste processing facility permit under [329 IAC 11](#).

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On February 21, 2012, the Solid Waste Management Board (board) conducted the first public hearing/board meeting concerning the development of amendments to rules at [329 IAC 11.7](#). Comments were made by the following parties:

Greg Bailey, Lehigh Cement (LCC)

Following is a summary of the comments received and IDEM's responses thereto:

Comment: I'm Greg Bailey. I'm here commenting on behalf of Lehigh Cement Company, and Lehigh Cement Company supports the state in their endeavor to manage the registration and control of solid waste that is intended to be used as an alternative fuel, and we support the preliminary adoption of this rule. (LCC)

Response: Thank you.

Comment: We also believe that this new rulemaking should coincide with the federal EPA's Office of Solid Waste Division in regard to the definition of "solid waste" and its exemptions, such as tires, as currently stated in their nonhazardous secondary materials definition, and the EPA's Air Division with respect their CISWI rulemaking. We believe a simple reference to these federal rulemakings in Indiana's new rulemaking is the easiest way to attain this. (LCC)

Response: The federal change to the definition of "solid waste" is not applicable to this rulemaking. Title 329 rules are designed to manage solid waste prior to burning and the Title 326 rules regulate the emissions of burning fuels.

[329 IAC 11.7](#)

SECTION 1. [329 IAC 11.7](#) IS ADDED TO READ AS FOLLOWS:

ARTICLE 11.7. ALTERNATIVE FUEL SOURCE

Rule 1. General Provisions

[329 IAC 11.7-1-1](#) Applicability

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 1. (a) Except as provided in [329 IAC 11.7-3-1](#), this article applies to a facility that:

(1) burns up to thirty percent (30%), by weight, of total fuel feed industrial process waste or commercial solid waste with a minimum fuel value of five thousand (5,000) Btus per pound; and

(2) is accepting solid waste from off-site and:

(A) stores industrial process waste or commercial solid waste for use as an alternative fuel source;
or

(B) processes industrial process waste or commercial solid waste as an alternative fuel source.

(b) This article replaces all solid waste processing standards and permitting requirements under [329 IAC 11](#) for a facility registered under this article.

(Solid Waste Management Board; [329 IAC 11.7-1-1](#))

[329 IAC 11.7-1-2](#) Severability

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 2. If any provision of this article or the application to any person or circumstance is held invalid, the invalidity shall not affect any other provisions or application of this article that can be given effect without the invalid provision or application.

(Solid Waste Management Board; [329 IAC 11.7-1-2](#))

[329 IAC 11.7-1-3](#) Acts prohibited

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 3. No person who owns or operates a facility to which this article is applicable shall cause or allow the storage, containment, processing, or disposal of solid waste in a manner that creates a threat to human health or the environment, including the creation of:

- (1) a fire hazard;**
- (2) a vector attraction;**
- (3) air, land, or water pollution; or**
- (4) other contamination.**

(Solid Waste Management Board; [329 IAC 11.7-1-3](#))

[329 IAC 11.7-1-4](#) Penalties

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-14](#); [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 4. Penalties for violation of this article shall be governed by [IC 13-14](#) and [IC 13-30](#).

(Solid Waste Management Board; [329 IAC 11.7-1-4](#))

[329 IAC 11.7-1-5](#) Local approvals

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-14](#); [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 5. The registration that is required by this article does not supersede or replace the need to obtain any local approvals.

(Solid Waste Management Board; [329 IAC 11.7-1-5](#))

[329 IAC 11.7-1-6](#) Commissioner approval

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-14](#); [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 6. In this article, any approval that is given by the commissioner is based on protection of human health and the environment.

(Solid Waste Management Board; [329 IAC 11.7-1-6](#))

Rule 2. Definitions

[329 IAC 11.7-2-1](#) Definitions

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-11-2](#); [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 1. The definitions in [IC 13-11-2](#) and [329 IAC 11-2](#) apply to this article unless a term is otherwise defined in this rule. The definitions in this rule apply throughout this article.

(Solid Waste Management Board; [329 IAC 11.7-2-1](#))

[329 IAC 11.7-2-2](#) "Alternative fuel" defined

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 2. "Alternative fuel" means a segregated solid waste that is industrial process waste or commercial solid waste, such as manufactured wood waste, paper, plastic, tires, rubber, carpet, oil filter fluff, cosmetics, or corn seeds where each waste stream has a minimum fuel value of five thousand (5,000) Btus per pound at the time the waste is introduced into the fuel combustion chamber.

(Solid Waste Management Board; [329 IAC 11.7-2-2](#))

[329 IAC 11.7-2-3](#) "Closure" defined

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 3. "Closure" means the activities to be completed at the registered facility at the end of solid waste acceptance, including the following:

- (1) Removal, proper processing, or disposal of all solid waste at the registered facility.
- (2) Notification to the commissioner.

(Solid Waste Management Board; [329 IAC 11.7-2-3](#))

[329 IAC 11.7-2-4](#) "Commercial solid waste" defined

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 4. "Commercial solid waste" has the meaning set forth in [329 IAC 10-2-32](#).

(Solid Waste Management Board; [329 IAC 11.7-2-4](#))

[329 IAC 11.7-2-5](#) "Contingency action plan" defined

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 5. "Contingency action plan" means a written course of action to be followed for emergency response in the event of an emergency that causes the release of contaminants into the environment or for the method or methods of waste management or disposal if the facility is unable to operate or process solid waste for twenty-four (24) hours or longer.

(Solid Waste Management Board; [329 IAC 11.7-2-5](#))

[329 IAC 11.7-2-6](#) "Discard" defined

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 6. "Discard" has the meaning set forth in [329 IAC 11-2-9.8](#).

(Solid Waste Management Board; [329 IAC 11.7-2-6](#))

[329 IAC 11.7-2-7](#) "Disposal" defined

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-11-2-57](#); [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 7. "Disposal" has the meaning set forth in [IC 13-11-2-57](#). For purposes of this article, disposal must meet the requirements in [329 IAC 11.7-7-1](#).

(Solid Waste Management Board; [329 IAC 11.7-2-7](#))

[329 IAC 11.7-2-8](#) "Financial assurance" defined

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 8. "Financial assurance" means, for purposes of this article, a bond acquired by the owner or operator of the registered facility in an amount sufficient to provide for:

- (1) remediation of contamination at the registered facility; and**
- (2) closure of the registered facility.**

(Solid Waste Management Board; [329 IAC 11.7-2-8](#))

[329 IAC 11.7-2-9](#) "Generator" defined

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 9. "Generator" means the person that discards solid waste regulated by this article.

(Solid Waste Management Board; [329 IAC 11.7-2-9](#))

[329 IAC 11.7-2-10](#) "Hazardous waste" defined

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 10. "Hazardous waste" has the meaning set forth in [329 IAC 3.1](#).

(Solid Waste Management Board; [329 IAC 11.7-2-10](#))

[329 IAC 11.7-2-11](#) "Household hazardous waste" defined

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 11. "Household hazardous waste" means hazardous waste:

- (1) generated by a household; and**

(2) exempt from the requirements of the hazardous waste rules at [329 IAC 3.1](#).

(Solid Waste Management Board; [329 IAC 11.7-2-11](#))

[329 IAC 11.7-2-12](#) "Industrial process waste" defined

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 12. "Industrial process waste" has the meaning set forth in [329 IAC 10-2-95](#).

(Solid Waste Management Board; [329 IAC 11.7-2-12](#))

[329 IAC 11.7-2-13](#) "Landowner" defined

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 13. "Landowner" means an owner of real property, as described in the recorded deed and the current county or counties plats. For purposes of this article, the term includes the lessee of the land.

(Solid Waste Management Board; [329 IAC 11.7-2-13](#))

[329 IAC 11.7-2-14](#) "On-site" defined

Authority: [IC 13-14-8-7](#); [IC 13-15-2-1](#); [IC 13-19-3-1](#); [IC 13-19-4-10](#)

Affected: [IC 13-30-2](#); [IC 25-31](#); [IC 36-9-30](#)

Sec. 14. "On-site" means all areas within the facility boundary.

(Solid Waste Management Board; [329 IAC 11.7-2-14](#))

[329 IAC 11.7-2-15](#) "Operator" defined

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 15. "Operator" means the person responsible for managing and overseeing a facility regulated under this article.

(Solid Waste Management Board; [329 IAC 11.7-2-15](#))

[329 IAC 11.7-2-16](#) "Owner" defined

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 16. "Owner" means the person who owns a facility required to register under this article.

(Solid Waste Management Board; [329 IAC 11.7-2-16](#))

[329 IAC 11.7-2-17](#) "Registered facility" defined

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 17. "Registered facility" means a:

- (1) storage;**
- (2) recycling; or**
- (3) processing;**

facility that is registered under this article.

(Solid Waste Management Board; [329 IAC 11.7-2-17](#))

[329 IAC 11.7-2-18](#) "Registration" defined

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 18. "Registration" means the notification to and the approval by the commissioner regarding the processing or storage of solid waste at the facility that:

- (1) meets the requirements for registration; and**
- (2) must register under this article.**

(Solid Waste Management Board; [329 IAC 11.7-2-18](#))

[329 IAC 11.7-2-19](#) "Residue" defined

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 19. "Residue" means, for purposes of this article, any unprocessed alternative fuel.

(Solid Waste Management Board; [329 IAC 11.7-2-19](#))

[329 IAC 11.7-2-20](#) "Solid waste" defined

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 20. "Solid waste" has the meaning set forth in [329 IAC 10-2-174](#).

(Solid Waste Management Board; [329 IAC 11.7-2-20](#))

[329 IAC 11.7-2-21](#) "Speculative accumulation" defined

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 21. "Speculative accumulation" means the storage before processing or recycling of large quantities of solid waste without a current outlet for the processed or recycled materials. It is a rebuttable presumption that storage of solid waste for more than six (6) months constitutes disposal.

(Solid Waste Management Board; [329 IAC 11.7-2-21](#))

[329 IAC 11.7-2-22](#) "Storage" defined

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 22. "Storage" means the retention, containment, or accumulation, on a temporary basis, of solid waste intended for processing in such a manner that the solid waste does not:

- (1) threaten or potentially threaten human health; or**
- (2) impact or potentially impact the environment.**

The term does not include speculative accumulation.

(Solid Waste Management Board; [329 IAC 11.7-2-22](#))

[329 IAC 11.7-2-23](#) "Uncontaminated wood" defined

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 23. "Uncontaminated wood" means wood or lumber that has not been treated or painted.

(Solid Waste Management Board; [329 IAC 11.7-2-23](#))

[329 IAC 11.7-2-24](#) "Waste determination" defined

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 24. "Waste determination" means the documented process of determining the qualitative and quantitative nature of a particular waste in order to establish the regulatory status of the waste and determine if the waste must be disposed of under the hazardous waste rules at [329 IAC 3.1](#), the PCB rules at [329 IAC 4.1](#), or the solid waste rules at [329 IAC 10](#). The regulatory status may be determined using either generator knowledge or testing by the methods in 40 CFR 261, Subpart C, or equivalent methods approved under 40 CFR 260.21 to ascertain the following:

- (1) The waste is a hazardous waste under 40 CFR 262.11 and is regulated under [329 IAC 3.1](#) because of the following:**
 - (A) The waste is not excluded from regulation under 40 CFR 261.4.**
 - (B) The waste is a listed waste under 40 CFR 261, Subpart D.**
 - (C) The waste exhibits characteristics specified in 40 CFR 261, Subpart C.**
- (2) The waste:**
 - (A) contains regulated amounts of PCBs; and**
 - (B) is regulated under [329 IAC 4.1](#).**
- (3) The waste is a solid waste and can be disposed of under [329 IAC 10](#).**
- (4) The waste is a solid waste and can be processed under [329 IAC 11](#).**

***Note: All federal regulations cited in this section are incorporated by reference as revised July 1, 2008. Sales of the Code of Federal Regulations are handled by the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954 or online at <http://bookstore.gpo.gov/>. The telephone number for the Superintendent of Documents is (202) 512-1800 or toll-free (866) 512-1800. The incorporated materials are available for public review at the offices of the department of environmental management.**

(Solid Waste Management Board; [329 IAC 11.7-2-24](#))

Rule 3. Exclusions

[329 IAC 11.7-3-1](#) Exclusions

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 1. (a) The following are excluded from regulation under this article:

- (1) Facilities that hold a valid permit under [329 IAC 10](#) or [329 IAC 11](#) to treat, process, store, or dispose**

of solid or hazardous waste that are not described in [329 IAC 11.7-1-1](#).

(2) Processing of uncontaminated and untreated natural growth solid waste and sawdust including the following:

- (A) Tree limbs.
- (B) Stumps.
- (C) Leaves.
- (D) Grass clippings.

(3) Facilities permitted under [329 IAC 3.1](#) that store, treat, or dispose of nonhazardous solid waste where such solid waste is treated or disposed of as a hazardous waste at the receiving hazardous waste facility.

(4) Processing and burning for fuel of manufactured wood waste for purposes of energy consumption on-site.

(b) If a facility is registered under this article, and accepts waste tires as an alternative fuel, then a registration is not required under [329 IAC 15](#). However, the facility must still comply with storage, operation, closure, and financial assurance requirements under [329 IAC 15](#) for tire processing prior to burning.

(Solid Waste Management Board; [329 IAC 11.7-3-1](#))

Rule 4. Registration

[329 IAC 11.7-4-1](#) Registration

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 4-21.5-3](#); [IC 13-15-7](#); [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 1. (a) The owners or operators of all facilities described under [329 IAC 11.7-1](#) are required to register, unless excluded under [329 IAC 11.7-3-1](#). A registration is for a fixed term not to exceed five (5) years. A registration may be renewed in accordance with this section.

(b) The registration form must be:

- (1) filled out completely; and
- (2) submitted to the commissioner in triplicate on a form or in a format provided by the commissioner.

(c) The commissioner may require the registration to be submitted electronically with an electronic signature. However, a registration may always be submitted electronically via electronic media.

(d) The registration must be modified whenever the:

- (1) process at the facility changes;
- (2) amounts of alternative fuel specified in subsection (f)(5) change; or
- (3) location of the facility changes.

(e) The registration may be renewed by submitting a renewal form at least sixty (60) days before the expiration date of the registration.

(f) The registration submission must include the following information:

- (1) The name of the owner, operator, and landowner, if different from the registered facility owner.
- (2) Addresses and telephone numbers for the owner, operator, and landowner.
- (3) The location and address of the facility.
- (4) The type of facility.
- (5) The type and maximum amounts, in tons, of alternative fuel that are delivered daily and the maximum amounts of each to be stored on-site and the probable duration of storage in days.
- (6) Incoming waste testing and screening procedures to ensure that the registered facility is processing solid waste streams that are acceptable for use as an alternative fuel at this registered facility.

(7) A plot plan that has a scale, including a bar scale, elevations that correlate with U.S. Geological Survey mean sea level data, north arrow, a map legend, facility boundary, roads, drainage ways, and identification on the plot plan of where the alternative fuel will be stored or processed in:

- (A) a building, including floor plan;
- (B) containers;
- (C) vehicles;
- (D) tanks; or
- (E) other proposed storage locations subject to approval by the commissioner.

(8) The construction material for all areas where alternative fuel will be:

- (A) stored; or
- (B) processed.

(9) A detailed description of the:

- (A) storage;
- (B) handling;
- (C) processing;
- (D) treatment; and
- (E) final disposition;

of the alternative fuel or solid waste generated.

(10) The maximum total amount, in tons, of alternative fuel and nonalternative fuel feed capable of being processed per hour.

(11) Other permits from the department for the facility.

(12) The date the facility became operational or will be operational.

(13) A contingency action plan that specifies the following:

- (A) An outline of the method or methods of waste disposal to be implemented if the registered facility is unable to operate or process and there is no more remaining storage capacity for the alternative fuel that has been approved in the registration.
- (B) The maximum amount of alternative fuel as specified in subdivision (5) at the facility at any one (1) time.
- (C) Emergency response plan for controlling:
 - (i) fire;
 - (ii) explosion;
 - (iii) spills; and
 - (iv) contamination.

(D) If required, a spill prevention control plan under Section 311(j)(1)(C) of the Clean Water Act.

(E) Areas where alternative fuels are contained or stored.

(F) A plot plan of the registered facility. The plot plan must include the information required in subdivision (7).

(G) A United States Geological Service (USGS) map that identifies the facility location and any access roads.

(H) Telephone numbers for the fire department responsible for responding to a fire or emergency at the registered facility.

(14) A description of any residue, leachate, or wastewater resulting from the processing or storing of alternative fuel. Applicable surface water controls under [327 IAC 15-6](#) must be specified.

(15) Alternative fuel handling and waste housekeeping procedures for the:

- (A) storage;
- (B) waste processing;
- (C) loading; and
- (D) unloading;

areas.

(g) The owner or operator must sign and submit the following certification with the registration submission: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including a fine or imprisonment for a knowing violation. I further certify that I am authorized to submit this information."

(h) The commissioner or a designee may deny, revoke, limit the length of, or place additional

conditions on a registration if the commissioner determines one (1) or more of the following:

- (1) The commissioner, under [IC 13-15-7](#), has revoked the applicant's previous registration under this article.
- (2) The registration submission is incomplete.
- (3) There is a violation of a requirement of this article or a condition of the registration.
- (4) There is a failure to disclose all relevant facts in obtaining a registration under this article.
- (5) There is a misrepresentation made in obtaining a registration under this article.
- (6) The applicant fails to meet the requirements for a registration.
- (7) The owner or operator fails to correct a condition as agreed to in an agreed order with the department or commissioner's order, or within the time established in the agreed order or commissioner's order, come into compliance with:
 - (A) the registration;
 - (B) this article; or
 - (C) both.

(i) The issuance of a registration does not:

- (1) convey any property right of any sort or any exclusive privileges;
- (2) authorize any injury to persons or private property or invasion of other private rights or any infringement of federal, state, or local laws or regulations; or
- (3) preempt any duty to comply with other federal, state, or local requirements.

(j) A registration is not transferable. A new owner or operator:

- (1) must submit a registration form to the commissioner thirty (30) days in advance of taking ownership of the facility; and
- (2) may operate the facility in the interim.

(Solid Waste Management Board; [329 IAC 11.7-4-1](#))

[329 IAC 11.7-4-2](#) Transition for submitting registration

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 2. (a) All owners or operators of an existing facility that are required to register under this article must submit a registration form within sixty (60) days after the effective date of this article. These facilities may continue to operate unless the registration is denied.

(b) No new facility that is required to register under this article may operate without a registration approval.

(Solid Waste Management Board; [329 IAC 11.7-4-2](#))

Rule 5. Storage Requirements

[329 IAC 11.7-5-1](#) Storage requirements for alternative fuels

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 1. (a) All registered facilities must store alternative fuels or residues in a manner that does not threaten human health and protects the environment. The following are examples of adequate storage:

- (1) A building that is weather tight with impervious floors.
- (2) A container capable of being enclosed.
- (3) A completely enclosed vehicle.
- (4) Tanks.
- (5) Other methods of storage that do not threaten or harm human health or the environment and have

been approved by the commissioner.

(b) Speculative accumulation of alternative fuel is not allowed. Facilities registered under this article must engage in only legitimate reuse or recycling as demonstrated by the following:

(1) The owner or operator of the registered facility must have a plan to reuse or recycle the alternative fuel that shows the following:

(A) Alternative fuel may be stored for periods exceeding six (6) months if there is a demonstrated need documented at the facility.

(B) The alternative fuel or any residue is stored in accordance with this rule and in a manner reflecting its value as a commodity.

(2) The registered facility must maintain records of alternative fuel received at the facility, nonalternative fuels burned in tons daily, and alternative fuel processed at the facility, recorded in estimated tons in a consistent manner at least daily, and include the following:

(A) Btu value for each waste stream.

(B) The total amount of residue shipped from the facility for disposal.

(3) Shipping papers and manifests as applicable for shipments of alternative fuel and residue shipped to or from the facility shall be maintained by the facility for a period of three (3) years.

(c) Storage, including the retention, containment, or accumulation of alternative fuel or residue, on a temporary basis must not:

(1) threaten or potentially threaten human health; or

(2) impact or potentially impact the environment.

It is a rebuttable presumption that storage of alternative fuel or any residue for more than six (6) months constitutes discarding and disposal.

(d) Any outside container or vehicle that is used for storage must be completely closed at the end of the operating day unless other storage provisions are approved by the commissioner.

(Solid Waste Management Board; [329 IAC 11.7-5-1](#))

Rule 6. Operational Requirements

[329 IAC 11.7-6-1](#) Operational requirements

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 1. (a) A facility that processes or stores alternative fuel or residue must have the following:

(1) An appropriate surface or pad for processing, such as concrete or asphalt, that will control spills and any liquids or leachate. Examples of an appropriate surface would be concrete or asphalt.

Facilities that are registered under this article that are only processing uncontaminated wood or plastic are not required to process on a pad.

(2) Adequate measures in place to control fire hazards, and equipment available to control fires. The contingency action plan required under [329 IAC 11.7-4-1\(f\)\(13\)](#) must be submitted to the local fire department that services the area.

(3) A telephone, cellular telephone, or radio communication device available when employees are present and the building is in use.

(4) Access control to the facility.

(5) A sign at least one (1) foot high by two (2) feet wide prominently displayed by the door or entrance to the facility and legibly containing the following information:

(A) The name of the facility.

(B) The IDEM registration number.

(C) The name and phone number of a designated emergency contact person.

(6) Adequate control of the following:

(A) Dust.

(B) Odors.

(C) Wastewater.

(D) Vectors.

(E) Litter.

(F) Leachate.

(7) Monitoring of incoming alternative fuels. Any waste that the facility is not registered or permitted to receive for processing must be isolated and removed from the facility.

(b) The owner or operator shall record and retain at the registered facility, or in an alternative location approved by the commissioner, all records, reports, or audits required by this article until certification of closure is deemed adequate by the commissioner under [329 IAC 11.7-8-1](#)(e). The following information must be retained:

(1) A paper copy or an accessible copy of the electronically submitted registration submission.

(2) A contingency action plan as required under [329 IAC 11.7-4-1](#)(f)(13).

(3) The records required under [329 IAC 11.7-5-1](#)(b)(2).

(4) The training log required under subsection (f).

(5) The results of any waste determination tests on the residues generated by the registered facility.

(c) The following must be furnished as required and made available during normal operating hours for inspection by any officer, employee, or representative of the commissioner:

(1) All records required by this article.

(2) All test results of the alternative fuels received and residues generated by the registered facility and disposed.

(d) No hazardous waste that is regulated by [329 IAC 3.1](#) shall be processed at any registered facility, unless the facility is permitted under [329 IAC 3.1](#) to process hazardous waste.

(e) Employees must be trained on safety, emergency, and operational procedures for the facility. A training log must be kept at the registered facility for five (5) years stating the following:

(1) The name of the employee.

(2) Training topics.

(3) Hours of training.

(Solid Waste Management Board; [329 IAC 11.7-6-1](#))

Rule 7. Disposal

[329 IAC 11.7-7-1](#) Disposal

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 1. Persons, generators, owners, or operators disposing of alternative fuel or residue must make a waste determination and dispose as applicable at either of the following:

(1) A facility permitted in Indiana under the following:

(A) [329 IAC 3.1](#).

(B) [329 IAC 4.1](#).

(C) [329 IAC 10](#).

(D) Solid waste processing facilities permitted under [329 IAC 11](#).

(E) [329 IAC 13](#).

(2) A facility registered under this article.

(3) An appropriate facility located out of state.

(Solid Waste Management Board; [329 IAC 11.7-7-1](#))

Rule 8. Closure

[329 IAC 11.7-8-1](#) Closure

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-25-5-8.5](#); [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 1. (a) The owner or operator must notify the commissioner in writing at least fourteen (14) days before the date when the registered facility permanently ceases accepting alternative fuel.

(b) All alternative fuel or residue must be:

(1) removed from the:

- (A) building;
- (B) containers;
- (C) storage areas;
- (D) tanks; and
- (E) vehicles; and

(2) disposed of according to [329 IAC 11.7-7-1](#);
within sixty (60) days of the registered facility no longer accepting alternative fuel.

(c) Any contaminants resulting from the storage or processing of alternative fuel that is above risk-based remediation objectives described in [IC 13-25-5-8.5](#) must be contained, removed, and disposed of according to [329 IAC 11.7-7-1](#). This requirement does not include any contaminants that the owner or operator can document were existing before the storage or processing of alternative fuel.

(d) A registered facility must be certified closed under subsection (e) after all solid waste is removed and disposed.

(e) The owner or operator must send a certification statement to the commissioner stating that the requirements of this section have been met within thirty (30) days after completion of the closure.

(Solid Waste Management Board; [329 IAC 11.7-8-1](#))

Rule 9. Financial Assurance

[329 IAC 11.7-9-1](#) Financial assurance for cleanup and closure

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-14](#); [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 1. (a) All owners or operators that are required to register under this article shall establish financial assurance for closure of the registered facility. The financial assurance must be provided as a surety bond as specified in subsection (c) in the amount that will provide for closure of the registered facility in the event the owner or operator has failed to close the registered facility.

(b) The amount that will provide for closure is determined by the maximum amount in tons of alternative fuel or residue that may be stored at the facility and that exceeds ten thousand (10,000) tons at any one (1) time, multiplied by thirty dollars (\$30) per ton.

(c) The surety bond is established as follows:

(1) On forms:

- (A) provided by the commissioner; or
- (B) as approved by the commissioner.

(2) All surety bonds must contain the following:

- (A) The establishment of minimum bond amount determined by subsection (b).
- (B) Provision that the surety will place the amount that will provide for closure into a standby trust fund, as directed by the commissioner, upon notice from the commissioner that the owner or operator has failed to close the facility under the requirements of [329 IAC 11.7-8-1](#).
- (C) Provision that the surety may not cancel the bond without first sending notice of cancellation by

certified mail to the owner or operator and the commissioner at least one hundred twenty (120) days before the effective date of the cancellation.

(D) Provision that the owner or operator may not terminate the bond without prior written authorization by the commissioner.

(3) The surety company issuing the bond must be:

(A) among those listed as acceptable sureties for federal bonds in Circular 570 of the United States Department of the Treasury; and

(B) authorized to do business in Indiana.

(4) The surety will not be liable for deficiencies in the performance of closure by the owner or operator after the closure certification is deemed adequate by the commissioner.

(5) The owner or operator shall establish a standby trust fund to be utilized in the event the owner or operator fails to fulfill closure obligations and the bond guarantee is exercised. The trust fund must be established in accordance with the following:

(A) On forms provided by the commissioner or forms as approved by the commissioner.

(B) The establishment of a standby trust fund in the amount determined by subsection (b) for commissioner-approved work done to close the facility.

(C) The requirement of successor trustees to notify the commissioner, in writing, of their appointment at least ten (10) days prior to the appointment becoming effective.

(D) The requirement that the funded trust is irrevocable unless terminated in writing by the commissioner.

(E) The requirement that all signatures be notarized by a notary public commissioned to be a notary public in the state of Indiana at the time of notarization.

(F) The requirement that the trustee is authorized to act as a trustee and is an entity whose operations are regulated and examined by a federal agency and a state of Indiana agency.

(d) The owner or operator may use a single surety bond to meet the requirements for more than one (1) facility. Evidence of financial assurance submitted to the commissioner must include a list showing, for each facility, the following:

(1) The IDEM registration number, name, and address.

(2) The amount of funds available through the surety bond that must be not less than the sum of funds that would be available if a separate surety bond had been established and maintained for each facility.

(e) An owner or operator shall do the following:

(1) Notify the commissioner by certified mail within ten (10) days from commencement of a voluntary or involuntary proceeding under bankruptcy under 11 U.S.C. 101 et seq., naming the owner or operator as debtor. An owner or operator who has a surety bond shall be deemed to be without the required financial assurance in the event of bankruptcy of the institution issuing the surety bond.

(2) Reestablish financial assurance within sixty (60) days after such an event. The registered facility cannot operate outside the sixty (60) day period without establishing a surety bond for the amount required under subsection (b).

(f) In addition to any other penalties provided for in this article or in [IC 13-14](#) and [IC 13-30](#), any failure to obtain, maintain, or fund financial assurance as required by this rule within the prescribed time limits shall be grounds for a proceeding to revoke the facility's registration or to order final closure of the registered facility.

(g) After the closure certification is deemed adequate by the commissioner, the owner or operator of the registered facility is released from the obligation of maintaining financial assurance under this article.

(Solid Waste Management Board; [329 IAC 11.7-9-1](#))

[Notice of Public Hearing](#)

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